

General Information Letter: Denial of petition to use alternative apportionment.

April 23, 1998

Dear:

This is in response to your letter dated April 6, 1998, in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you did not request a GIL, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated the following:

We are filing this petition to request permission to use a separate accounting method in determining the portion of our net income allocable to and taxable by Illinois.

xxxxx xx xxxxxxxx, x.x. (xxxxx) is a limited partnership which trades stocks and options contracts for its own account as members of various options exchanges including the American Stock Exchange, the Philadelphia Stock Exchange, the Pacific Coast Stock Exchange and the Chicago Board of Options Exchange. The firm's activities are conducted by trading partners, each of whom is responsible for trading a separate account. All of the income and expenses attributable to that trader's activities are recorded in his account.

There is no income generated by an account which is not allocated to it. The firm does incur some general overhead, but none of those expenses are allocated to the various traders, rather, they are allocated to the New York activities of the firm.

Since separate accounting clearly reflects the income earned by each account and since each account's activity takes place in a single state (i.e. on the AMEX in New York or the CBOE in Illinois) separate accounting would better reflect business activity taking place within each of the various states in which xxxxx operates.

Based on the preceding, we respectfully request permission to use the separate accounting method to allocate income to Illinois.

Ruling

Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides:

If the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State;
or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

By its terms, Section 304(f) of the IITA only allows taxpayers to use an alternative method of allocating income to Illinois if the method generally prescribed for the taxpayer under Section 304 does not fairly represent the taxpayer's business activities within Illinois. Your request does not assert any facts which would support a conclusion that the three-factor apportionment formula prescribed Section 304(a) of the IITA -- which appears to be the method prescribed for your partnership -- would not fairly represent the partnership's Illinois business activities.

In addition, your statement that all overhead expenses would be allocated to New York under your separate-accounting method indicates that your proposed method would allocate too much of the partnership's base income to Illinois, and thus that method would not be suitable as an alternative method of allocation.

Accordingly, we are unable to grant your petition.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely,

Paul S. Caselton
Associate Chief Counsel -- Income Tax